

APPEAL NO. 032270
FILED OCTOBER 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 31, 2003. The hearing officer determined that the compensable injury of _____, does not extend to include the bilateral elbows, shoulders, and/or neck. The appellant (claimant) appeals this determination and argues that the hearing officer mischaracterized the nature of the dispute in this case. The respondent (carrier) urges affirmance.

DECISION

Affirmed as reformed.

We first address the claimant's assertion that the hearing officer mischaracterized the nature of the dispute in reaching a decision in this case. The following issue was certified in the benefit review conference report: Does the _____, compensable injury extend to include bilateral elbows, shoulders, and/or neck in addition to the bilateral wrists? The claimant attempted to clarify her position at the hearing, stating "It's not an extend to and affect issue...It's a question of what is the original injury, what does the injury consist of." Upon our review of the record, we find no indication that the hearing officer failed to consider the issue as clarified by the claimant. Accordingly, we do not reverse the hearing officer's decision on this basis.

BILATERAL ELBOWS

The hearing officer did not err in determining that the compensable injury of _____, does not extend to include the bilateral elbows. This determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

SHOULDERS AND NECK

The hearing officer erred in determining that the compensable injury of _____, does not extend to include the shoulders and/or neck. In the "Statement of the Evidence," the hearing officer stated, "At the conclusion of all the

testimony, the parties agreed that the compensable injury did not extend to include the neck or shoulders.” In Finding of fact No. 1.E., the hearing officer found:

FINDINGS OF FACT

1. The parties made the following stipulations on the record:

* * *

- E. The compensable injury does not extend to include the Claimant’s neck or her shoulders bilaterally.

The claimant contends that the “Statement of the Evidence” is not accurate and Finding of Fact 1E is against the great weight of the evidence. Upon our review of the record, it is clear that the parties did not stipulate that the shoulders and neck were not compensable; rather, the claimant essentially withdrew the issue of extent of injury to the shoulders and/or neck at the close of the evidence. Accordingly, we strike Finding of Fact No. 1.E. and reform Conclusion of Law No. 3 and the “Decision” to state, “The _____, compensable injury does not extend to include the bilateral elbows in addition to the bilateral wrists.”

Consistent with our discussion above, the hearing officer’s decision and order is affirmed as modified.

The true corporate name of the insurance carrier is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge